

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
WDKA Acquisition Corporation)	Facility I.D. No. 39561
Licensee of Station WDKA(TV))	NAL/Acct. No.: 201341420049
Paducah, Kentucky)	FRN: 5013164

FORFEITURE ORDER

Adopted: December 3, 2013

Released: December 4, 2013

By the Chief, Video Division, Media Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order*, issued pursuant to Sections 0.61(f)(1) and 1.80(a)(1) and (2) of the Commission's rules,¹ we find that WDKA Acquisition Corporation, licensee of Station WDKA(TV), Paducah, Kentucky, willfully and repeatedly violated Section 73.3539(a) of the Commission's Rules (the "Rules") by failing to file in a timely manner with the Commission its Application for Renewal of Broadcast Station License (FCC Form 303-S)("license renewal application"). Based on our review of the facts and circumstances, we find the Licensee liable for a forfeiture of one thousand, five hundred dollars (\$1,500.00).

II. BACKGROUND

2. The Video Division issued a Notice of Apparent Liability ("NAL") for Forfeiture on September 23, 2013.² The NAL notified the Licensee that it failed to file its license renewal application as required under Section 73.3539(a).³ The Division concluded that the Licensee was apparently liable for a forfeiture of \$1,500.

3. In a timely Response filed October 17, 2013,⁴ the Licensee does not dispute that its license renewal application was filed late. Instead, the Licensee asserts the proposed forfeiture should be canceled or rescinded and this proceeding terminated because: (1) the Licensee's conduct was not willful,

¹ 47 C.F.R. §§ 0.61(f)(1), 1.80(a)(1) & (2).

² *WDKA Acquisition Corporation*, Notice of Apparent Liability for Forfeiture, DA 13-1941 (Sept. 23, 2013) ("*WDKA NAL*").

³ 47 C.F.R. § 73.3539(a)(requiring a broadcast television license renewal application to be filed "not later than the first day of the fourth full calendar month prior to the expiration date of the license sought to be renewed..."). The Licensee's license was scheduled to expire on August 1, 2013. In accordance with Section 73.3539(a) of the Rules, the Licensee was required to file its Form 303-S to renew the license of WDKA on or before April 1, 2013. The Licensee did not file its License Renewal Application until May 6, 2013, a total of one month and five days late.

⁴ *WDKA Acquisition Corp.*, Response to Notice of Apparent Liability at 2-5 (Oct. 17, 2013) ("*WDKA Response*").

it was inadvertent, and (2) the Licensee was treated in a manner that was inconsistent with other similarly situated broadcast licensees.⁵

III. DISCUSSION

4. The Commission is authorized to license radio and television broadcast stations and is responsible for enforcing the Commission's rules and applicable statutory provisions concerning the operation of those stations. Under section 503(b)(1) of the Act, any person who is determined by the Commission to have willfully or repeatedly failed to comply with any provision of the Act or any rule, regulation, or order issued by the Commission shall be liable to the United States for a forfeiture penalty.⁶ In order to impose a forfeiture penalty, the Commission must issue a notice of apparent liability, the notice must be received, and the person against whom the notice has been issued must have an opportunity to show, in writing, why no such penalty should be imposed.⁷ The Commission will then issue a forfeiture order if it finds by a preponderance of the evidence that the person has violated the Act or a Commission rule.⁸

5. In its Response, the Licensee does not dispute that it failed to file electronically its license renewal application with the Commission in a timely manner. The Licensee's conduct by omission constitutes an apparent repeated and willful violation of Section 73.3539(a) of the Rules.⁹ Commission policy establishes a base forfeiture amount of \$3,000 for failure to file a required form.¹⁰ In determining the appropriate forfeiture amount, the Commission may adjust the base amount upward or downward by considering the factors in Section 503(b)(2)(D), which include "the nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require."¹¹ In the NAL, the Commission proposed a forfeiture amount of \$1,500. Licensee argues that the proposed forfeiture amount should be rescinded or cancelled, it does not request a reduction. We have considered all of the Licensee's arguments and conclude that cancellation of the proposed forfeiture amount is not appropriate. For the reasons set forth in greater detail below, we find that the Licensee is liable for a forfeiture in the amount of \$1,500.

6. First the Licensee argues that the Video Division failed to explain why it was issued a forfeiture for its late filed license renewal application while two other licensees' were, subsequently, only issued admonishment letters.¹² The Licensee contends that the Video Division "fail[ed] to explain why similarly situated licensees were treated differently."¹³ As a preliminary matter, we note that the admonishment letters referenced by the Licensee were issued two days after the NAL. As such, it would have been impossible for the Video Division to distinguish the facts and circumstances in the NAL from

⁵ *Id.* at 2-5.

⁶ 47 U.S.C. § 503(b)(1) (A) & (B); 47 C.F.R. § 1.80(a)(1)(2).

⁷ 47 U.S.C. § 503(b); 47 C.F.R. § 1.80(f).

⁸ *See, e.g., SBC Communications, Inc.*, Forfeiture Order, 17 FCC Rcd 7589, 7591 (2002).

⁹ 47 C.F.R. § 73.3539(a).

¹⁰ *See Forfeiture Policy Statement and Amendment of Section 1.80(b) of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17113-15 (1997), *recon. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80(b)(5), note to paragraph (b)(5), Section I.

¹¹ 47 U.S.C. § 503(b)(2)(D).

¹² *WDKA Response* at 2-3.

¹³ *Id.* at 3.

those in the admonishment letters. Nonetheless, *ex post facto*, we find the facts between the NAL and two admonishment letters to be distinguishable.

7. In the cases cited by the Licensee that resulted in admonishments,¹⁴ the license renewal applications at issue were filed nine and ten days late. In contrast, the Licensee filed its license renewal application one month and five days after the filing deadline. We find that the Licensee's untimely filing has a greater detrimental impact on the public interest by delaying both the public's review of the Licensee's efforts during the previous license term and the fulfillment of the Commission's obligations under Section 309(k) of the Act.¹⁵ For example, the late filing resulted in the petition to deny period, which provides the public an opportunity to submit formal input, to run until the license had already expired.¹⁶

8. The Licensee also argues that the forfeiture amount should be cancelled because its conduct was "wholly inadvertent" and thereby not willful.¹⁷ The Licensee contends that "[t]o accept the Video Division's interpretation of the law would render every apparent violation of the rules a "willful" one...."¹⁸ We disagree. A licensee has an obligation to comply with all relevant statutes and Commission rules, regulations and orders.¹⁹ This includes a licensee's obligation to file a license renewal application once every eight years. As we stated in the NAL, "the Commission has held that an inadvertent error, oversight or failure to become familiar with Commission requirements are willful violations."²⁰ This statement is consistent with well-established Commission precedent interpreting the term "willful" as it relates to Section 503(b) of the Act and Section 1.80 of the Rules.²¹ Furthermore, the statutory definition of "willful" under Section 312(f)(1) of the Act clearly states that "willful" is evaluated irrespective of intent (*e.g.*, acting unintentionally or inadvertently).²²

¹⁴ *PTP Holdings, Inc.*, Admonishment Letter DA 13-1997 (Sept. 25, 2013); *Channel Eleven, Inc.*, Admonishment Letter DA 13-1976 (Sept. 25, 2013).

¹⁵ 47 U.S.C. § 309(k)(in order to determine whether a broadcast license renewal should be granted the Commission must evaluate if, during the preceding license term: (1) the station has served the public interest, convenience and necessity; (2) there have been no serious violations; and (3) there have been no other violations that could constitute a pattern of abuse).

¹⁶ Section 73.3516(e)(1) states that the petition to deny for a late filed license renewal application will be 90 days from when the license renewal application is placed on public notice. In this instance, the license renewal application was placed on public notice on May 9, 2013. The petition to deny period would not have ended until August 7, 2013, six days after the license expired.

¹⁷ *WDKA Response* at 3-4.

¹⁸ *Id.* at 4.

¹⁹ *See, e.g., Sitka Broadcasting Co., Inc.*, 70 FCC 2d 2375, 2378 (1978) (licensees have a responsibility to be aware of, and comply with, all applicable statutes, regulations, rules and Orders).

²⁰ *WDKA NAL* at ¶ 4.

²¹ *See PJB Communications of Virginia, Inc.*, Memorandum Opinion and Order 7 FCC Rcd 2088 (1992)(asserting that "[t]he fact that a licensee's violation occurred through inadvertence does not prevent it from being willful. It is not necessary that the violation be intentional"); *See also, Standard Communications Corp.*, Memorandum Opinion and Order, 1 FCC Rcd 358 (1986)(stating that "employee acts or omissions, such as clerical errors in failing to file required forms, do not excuse violations"); *See Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991), recons. denied, 7 FCC Rcd 3454 (1992)(*"Southern California"*)(stating that "Commission interpretations of "willful" do not require licensee intent to engage in a violation").

²² 47 U.S.C. § 312(f)(1). Licensee contends that its failure to file a license renewal application was "wholly inadvertent," however, for purposes of our evaluation this is not dispositive. *WDKA Response* at 3-4.

9. The Licensee also cites *Vernon Broadcasting*²³ as evidence that its failure to file a license renewal application was not “conscious and deliberate” and thereby not “willful.”²⁴ In *Vernon Broadcasting*, the licensee received a forfeiture for inadequate fencing around its tower in violation of Section 73.49(a)(8) of the Rules. Upon review the Commission found that the violation was not willful because the broken fence was a result of vandalism, not the licensee’s conduct, whether by commission or omission. The Commission determined that there was no indication that the licensee was aware of the broken fence before the inspection by the Commission and that the licensee did not fail to properly monitor the site.²⁵ Unlike in *Vernon Broadcasting*, the Licensee here does not dispute that its conduct by omission resulted in the violation. To determine that Licensee’s omission was not willful would require the Video Division to find that ignorance of our rules is an excuse. Such a finding would be contrary to well-established precedent.²⁶

IV. ORDERING CLAUSES

10. **ACCORDINGLY, IT IS ORDERED THAT**, pursuant to section 503(b) of the Communications Act of 1934, as amended, and Sections 0.61(f)(1) and 1.80(a)(1)&(2) of the Commission’s rules,²⁷ WDKA Acquisition Corporation SHALL FORFEIT to the United States the sum of One Thousand, Five Hundred Dollars (\$1,500) for violation Section 73.3539(a) of the Commission’s Rules.

11. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 (h) of the Commission’s rules within thirty (30) calendar days after the release date of this Forfeiture Order. If the forfeiture is not paid within the period specified, the case may be referred to the U.S. Department of Justice for enforcement of the forfeiture pursuant to Section 504(a) of the Communications Act of 1934, as amended. The Licensee shall send electronic notification of the payment to Evan Morris at evan.morris@fcc.gov on the date payment is made.

12. The payment must be made by check or similar instrument, wire transfer, or credit card, and must include the NAL/Account number and FRN referenced above. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted. When completing FCC Form 159, enter the Account Number in block number 23A (call sign/other ID) and enter the “FORF” in block number 24A (payment type code). Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with the completed Form 159) must be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

²³ *Vernon Broadcasting, Inc.*, Memorandum Opinion and Order, 60 RR 2d 1275 (1986)(“*Vernon Broadcasting*”).

²⁴ *WDKA Response* at 4.

²⁵ *Vernon Broadcasting*, 60 RR 2d at 1277.

²⁶ See, e.g., *Emery Tel.*, Memorandum Opinion and Order, 13 FCC Rcd 23854, 23859 (1998) (by issuing forfeitures for apparently inadvertent violations, the Commission “impels licensees to be more familiar with the applicable rules in structuring future conduct”), *recons. dismissed in part and denied in part*, Memorandum Opinion and Order, 15 FCC Rcd 7181 (1999); *Lakewood Broad. Serv., Inc.*, Memorandum Opinion and Order, 37 FCC 2d 437, 438 (1972)(denying a mitigation claim based on a licensee’s assertion of unfamiliarity with station identification requirements, reasoning that “[i]f ignorance of [the Rules] were accepted as an excuse, we would be encouraging licensees to know as little as possible”); *Southern California*, 6 FCC Rcd at 4387 (finding that “inadvertence...is at best, ignorance of the law, which the Commission does not consider a mitigating circumstance”).

²⁷ 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.61(f)(1) & 1.80(a)(1)&(2).

13. **IT IS FURTHER ORDERED THAT** copies of this *NAL* shall be sent, by First Class and Certified Mail, Return Receipt Requested, to WDKA Acquisition Corporation, P.O. Box 346, Rescue, Virginia, 23424, and to its counsel, Arthur V. Belendiuk, Esq., Smithwick & Belendiuk, P.C., 5028 Wisconsin Avenue, N.W., Suite 301, Washington, D.C., 20016.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
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